

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

ROBERTA WHIPPLE

SUMMONS IN A CIVIL ACTION

V.

MODESTA, INC., ANNA ZANIEWSKA and
KAZIMIERZ ZANIEWSKI

CASE NUMBER:

07 CIV 7368

JUDGE LYNCH

TO: (Name and address of Defendant)

Modesta, Inc., 123 Bourne Circle, Hamburg, NJ 07419
Anna Zaniewska, 123 Bourne Circle, Hamburg, NJ 07419
Kazimierz Zaniewski, 123 Bourne Circle, Hamburg, NJ 07419

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Robert W. Finke
52 Duane Street, 5th Floor
New York, New York 10007

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

AUG 17 2007

J. MICHAEL McMAHON

CLERK

DATE

(By) DEPUTY CLERK

AO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE 07 CIV 7368		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE <u>9/24/2007 755PM</u>	
NAME OF SERVER (PRINT) <u>Manuel Buyo</u>	TITLE <u>Process Server</u>	
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> G Served personally upon the third-party defendant. Place where served: _____		
<input type="checkbox"/> G Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____		
<input type="checkbox"/> G Returned unexecuted: _____		
<input checked="" type="checkbox"/> G Other (specify): <u>Modesta Inc. DB Burns Circle Hartsburg NY 07419</u> <u>Upon Agent Anna Zaniowska F/Wht/Blt Ht/5'4"/Wt/145 lbs/DOB/12/15/65</u>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on <u>9/24/2007</u> _____ Signature of Server</p> <p style="text-align: right;"><u>CLG NY Svr LLC 173 N Main #375 Sayville NY 11722</u> Address of Server</p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

AO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE 07 CIV 7368		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE 9/24/2007 755 PM	
NAME OF SERVER (PRINT) Manuel Bayo	TITLE Process Server	
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> G Served personally upon the third-party defendant. Place where served: _____		
<input type="checkbox"/> G Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____		
<input type="checkbox"/> G Returned unexecuted: _____		
<input checked="" type="checkbox"/> G Other (specify): Anna Zaniowska, 123 Prairie Circle, Hightstown NJ 07419 F/Wife/Born 1/1/54/45 SSN 150675		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on <u>9/24/2007</u> _____ Date Signature of Server</p> <p style="text-align: center;"><u>46 NY State LLC 173 N Main St, Sayville NY 11782</u> Address of Server</p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

AO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE 07 CIV 7368		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE 9/24/2007 755 PM	
NAME OF SERVER (PRINT) Manuel Buxo	TITLE Process Server	
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> G Served personally upon the third-party defendant. Place where served: _____		
<input type="checkbox"/> G Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____		
<input type="checkbox"/> G Returned unexecuted: _____		
<input checked="" type="checkbox"/> G Other (specify): <u>Kazimierz Zaniewska 123 Barre Circle, Hamburg NY 07419</u> <u>upon Anna Zaniewska F/Whit/Blk Hr 5'4"/45-55yrs/150lbs</u>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on <u>9/24/2007</u> _____ Date Signature of Server</p> <p style="text-align: center;"><u>cto NY Server LLC, 173 N Main #375, Sayville NY 11782</u> Address of Server</p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROBERTA WHIPPLE

Plaintiff,

V.

MODESTA, INC., ANNA ZANIEWSKA
and KAZIMIERZ ZANIEWSKI

Defendants.
-----X

CASE NO. 07 Civil - 07368

COMPLAINT

JURISDICTION AND VENUE

1. Plaintiff, Roberta Whipple, is a citizen of the State of Connecticut and defendant Modesta, Inc. is a corporation incorporated under the laws of the State of New Jersey with its principal place of business located in Hamburg, New Jersey. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332.

2. On or about November 23, 2004, the plaintiff and the defendant entered into an agreement in which the defendant agreed to construct a certain single family house on real property owned by the plaintiff located at 450 Newtown Turnpike, Weston, Connecticut.

3. Venue is proper in this Court in that the parties agreed that the venue of any dispute arising out of said agreement shall be justiciable only in the Courts of New York, venued in the County of New York or Southern District of New York.

FIRST CAUSE OF ACTION – BREACH OF CONTRACT

4. Said agreement provided that the defendant would “import and deliver to the site all necessary workers and materials for the construction, assembly and completion of Mountain Spirit Chalet II, 3-Bedroom, Single Family 2649 square feet, log style house.”

5. Said agreement required the plaintiff to pay the defendant the sum of \$88,800.00 as a contract deposit for the agreement in order to purchase materials for the project.

6. Said agreement provided for the plaintiff to pay a total purchase price, for labor and materials of \$444,000.00 for the construction of the house.

7. The plaintiff gave the defendant the sum of \$88,800.00 pursuant to the aforementioned agreement.

8. As part of said agreement, the plaintiff was required to perform certain site work on the premises to prepare the lot for building, including site cleanup, blasting, stone removal, excavation, surveying, engineering and permitting.

9. The plaintiff performed all of the required site work on the premises to prepare the site for the construction of the house.

10. Notwithstanding payment of all amounts due under the agreement, and preparation of the site for construction of the house, the defendant has failed to commence construction of the house.

11. Notwithstanding the plaintiff's demand for return of all amounts paid under the agreement, the defendant has refused to refund the same.

12. As a result of the defendant's breach of the contract, the plaintiff has been damaged in the amount of \$88,800.00 for the contract deposit, \$53,238.75 for site improvements and \$25,500.00 for taxes and insurance on the premises.


SECOND CAUSE OF ACTION – FRAUD

13. The defendant fraudulently induced the plaintiff to pay the defendant the sum of \$88,000.00 when the defendant had no intention of completing any work on the premises.

14. As a result of the defendant's fraudulent representations, the plaintiff has been damaged in the amount of \$88,800.00 for the contract deposit, \$53,238.75 for site improvements, and \$25,500.00 for taxes and insurance together with reasonable attorneys fees and punitive damages.

WHEREFORE, the plaintiff demands judgment against the defendant in the amount of \$166,738.75 together with reasonable attorneys fees and punitive damages.

THE PLAINTIFF
ROBERTA WHIPPLE

By: 
Robert W. Finke (RF0834)
Attorney for Roberta Whipple
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New York, New York 10007
Tel. (212) 406-9522
Fax. (646) 649-4561